

MONDAY, JUNE 2, 2003

RULE PROPOSAL
COMMUNITY AFFAIRS
DIVISION OF FIRE SAFETY

UNIFORM FIRE CODE
FIRE CODE ENFORCEMENT
LIFE HAZARD USES; CERTIFICATES; PERMITS AND CARNIVALS; FEES

**Proposed Amendments: N.J.A.C. 5:70-1.5, 2.4A, 2.4B, 2.4C, 2.7
and 2.9 and 5:71-2.6**

Authorized By: Susan Bass Levin, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198, 198.2, 201 and 133.3.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003-215.

Submit written comments by August 1, 2003 to:

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The agency proposal follows:

Summary

To fund its fire safety programs, the Department proposes to increase by 20 percent most fees charged by the Division of Fire Safety and to require registration of new categories of life hazard uses. Life hazard uses are defined at N.J.A.C. 5:70-2.4 through 2.4D and are subject to annual, semiannual or quarterly Uniform Fire Code inspections. Most Division of Fire Safety fees have not been increased since 1991, and in 1996, some of the larger life hazard use fees were reduced by five percent. The increased fees are necessary to cover increased costs as evidenced partially by a greater than 38 percent

increase in State employee wages and a greater than 20 percent cost of living increase both of which have occurred over the last 10 years.

The Department notes that, since 1991, the Division of Fire Safety has experienced staff losses that are beginning to affect its stated mission of insuring that all areas of the State are protected from fire, explosions and other hazards. This is particularly disturbing in light of the increasing responsibilities imposed upon the Division of Fire Safety because of homeland security issues. A portion of the revenues generated by this fee proposal would be used to fund some of these lost positions.

The amendments would establish completely new life hazard use registration categories at N.J.A.C. 5:70-2.4A(a)4, (c)6, (c)7, (d)6, (e)4 and (g)4, and 2.4B(d)6 and (f)24 for certain funeral homes, parlors, and mortuaries, recreation centers, multi-purpose rooms, lecture halls, art galleries, after school programs, adult day care centers and similar uses. These uses are statutorily defined as life hazard uses and would be subject to annual inspections. A new category would also be created for schools with six to 49 pupils to comply with a recent amendment to the Uniform Construction Code, N.J.A.C. 5:23.

The Department further proposes to expand its existing life hazard use categories for larger warehouses, prisons, theaters, retail stores, factories, recreation centers, multi-purpose rooms, lecture halls, art galleries and similar uses by refining the categories based on size. This is being done to compensate for the increased time for and complexity of inspections due to the growing size of these uses. The new categories would result in increased fees for these uses, and some would be subject to quarterly inspections.

Currently, the Department rebates a percentage of collected life hazard use fees to local agencies that perform inspections on behalf of the Commissioner. After a 1996 fee decrease, the Department changed the previous 65 percent, 35 percent split of fees with local agencies to insure that they would not get a reduction in the total amount of fees due them. In some cases, this created a situation where local agencies ended up with 100 percent of the fees for particular uses. The Department proposes to eliminate this anomaly by reverting to the old split of 65 percent to the local agency and 35 percent to the Department.

The Department also proposes to increase the fees charged by the Division of Fire Safety for the issuance of certificates of smoke detector and carbon monoxide compliance in one-and two-family dwellings upon sale or change of occupancy. The fee for a certificate of smoke detector compliance issued by the Division was an unreasonably low \$20.00, as it has been since 1992. The fee for the new joint certificate of smoke detector and carbon monoxide alarm compliance is also \$20.00. Under this proposal, the basic fee for the joint certificate would be a more realistic \$35.00. This fee is based on expected costs and is an average for similar fees charged locally throughout the State. The fee would rise to \$70.00 if the certificate were requested within 10 days of application and to \$125.00 if requested within three days of application. The higher fees for short notice certificates are intended to encourage early application and to provide funding to process efficiently short-notice requests.

The Department originally proposed a joint smoke/carbon monoxide certificate and fee increase at 33 N.J.R. 2572(a). That proposal was allowed to lapse while the Department continued to study the feasibility of carbon monoxide detectors for one and two family residential occupancies. Upon completion of its research and after discussion with interested others, the Department elected to go forward with the fee and above mentioned detector proposal. The detector portion of the original proposal was adopted at 34 N.J.R. 1558©.

Finally, the Department proposes to increase its carnival registration fees by 20 percent to help offset increased costs.

Summary of Public Comments and Agency Responses to Prior Proposal

The Department proposed a fee increase for smoke detector certificates on August 6, 2001 at 33 N.J.R. 2572(a). That proposal was not adopted and was allowed to expire. Comments in response to the fee portion of that proposal were received from the following persons: Jarrod C. Grasso, Director of Government Affairs of the New Jersey Association of Realtors and David E. Herbert, CPM, Fire Marshal of East Brunswick Fire District #1.

COMMENT: The New Jersey Association of Realtors is concerned about the increased smoke detector fees contained in the proposal.

RESPONSE: The Department has not increased its one-and two-family dwellings certificate fees in 10 years, despite increased cost. The short notice premiums are necessary to fund the efficient and effective processing of certificates in relatively short periods.

COMMENT: Scheduling smoke detector inspections is a major issue with my local enforcing agency. Higher fees for inspections on short notice should induce real estate agents to give sufficient notice prior to closings.

RESPONSE: The Department agrees that the short notice premium would discourage some, but not all, short notice requests. To better serve the public, the fee premiums would be used to insure that short notice requests are processed timely. Municipalities would be able to set their own fees for smoke and carbon monoxide detector certificates based upon their costs, if those fees are consistent with the other pertinent requirements of the Uniform Fire Code and Uniform Fire Safety Act.

Since a 60-day comment period is being provided for this rule proposal, the proposal, in accordance with N.J.A.C. 1:30-3.3(a)5, is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

Social Impact

The proposed fee increases are necessary to allow Uniform Fire Safety Act programs to continue to be self-supporting as intended by the Legislature. All of these programs are necessary for the protection of public health and safety and must be properly funded if they are to operate effectively. This is particularly true in light of September 11, 2001 and the resulting emphasis on homeland security. The Department notes that many of its life hazard uses are properties that could possibly be targeted by terrorists, making the work of local fire officials and inspectors and Division of Fire Safety personnel essential to providing basic public protection.

The new life hazard use designations would mandate annual inspection by certified fire inspectors, since some local enforcing agencies improperly do not inspect routinely uses not required to register with the State.

Economic Impact

The proposed amendments would generate an increase in Division of Fire Safety and local enforcing agency revenues. In the short run, the Department expects approximately an annual 20 percent increase in total fees collected. Sixty-five percent of those funds would be rebated to county, municipal and fire district Uniform Fire Code local enforcing agencies in accordance with statute and rule. The remaining 35 percent would be used to fund the State's administration and enforcement of the Uniform Fire Safety Act.

Businesses and individuals would have to pay these increased fees. The range of fees would increase from \$70.00 through \$3,088 to \$84.00 to \$3,706 for life hazard use owners, from \$35.00 through \$414.00 to \$42.00 through \$497.00 for permit applicants, and from \$50.00 through \$100.00 to \$60.00 through \$120.00 for carnival registrations. Smoke/CO certificate fees would increase as indicated in the Summary above.

Federal Standards Statement

No Federal standards analysis is required because the proposed amendments are not being proposed under the authority of, or in order to implement, comply with or participate in, any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements.

Jobs Impact

The Department does not anticipate that implementation of the proposed amendments will result in the creation or loss of any jobs.

Agriculture Industry Impact

To the extent that any agricultural facility includes a life hazard use, it will be subject to the same increase in fees as any similar life hazard use that is not part of an agricultural facility.

Regulatory Flexibility Analysis

The proposed amendments do not place any reporting or recordkeeping burden upon "small businesses," as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The only additional compliance burden placed upon such entities, in common with all other entities subject to the same rules, is that they must pay a fee increase necessary to cover program costs and to allow the Department to better protect public health and safety. No distinction can, therefore, be made as to the size or form of organization of the fee-paying entity for fee increase purposes. The Department notes that some fee categories were initially established based on size of operation as well as

other factors.

Smart Growth Impact

The Department does not anticipate any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan because of the proposed fee changes or new life hazard use registrations.

Full text of the proposal follows:

5:70-1.5 Definitions

The following terms shall have the meaning indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq., shall be applicable to this chapter. Where a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

“Use” or “Use Group” means the use to which a building, portion of a building, or premises, is put, as follows. It shall also mean and include any place, whether constructed, manufactured or naturally occurring, whether fixed or mobile, that is used for human purpose or occupancy that would subject it to the provisions of this Code if it were a building or premises.

1.-7. (No change.)

8. “Use Group E”: This Use Group shall include all buildings and structures <<+used for educational purposes+>> serving <<-50->> <<+ six+>> or more students <<+in any or all of the grades+>> from kindergarten through grade 12 <<-and also means and includes any educational building serving 50 or more students in some, but not all, of the grades from kindergarten to grade 12, inclusive->>.

9.-20. (No change.)

5:70-2.4A Type Aa through Aj life hazard uses

(a) Type Aa life hazard uses are as follows:

1.-3. (No change.)

<<+4. Public and private Use Group E buildings or parts thereof with a maximum permitted occupancy of six or more but no greater than 50 persons.+>>

(b) (No change.)

(c) Type Ac life hazard uses are as follows:

1.-5. (No change.)

<<+6. Funeral homes, funeral parlors and mortuaries providing access to the public with a maximum permitted occupancy of 50 or more but fewer than 100 persons; and+>>

<<+7. Recreation centers and multipurpose rooms used for adult day-care with a maximum permitted occupancy of six or more but fewer than 50 persons.+>>

(d) Type Ad life hazard uses are as follows:

1.-5. (No change.)

<<+6. Recreation centers, multipurpose rooms, lecture halls, art galleries, exhibition halls and similar uses where persons assemble other than for religious services with a maximum permitted occupancy of 50 or more but fewer than 100 persons.+>>

(e) Type Ae life hazard uses are as follows:

1.-3. (No change.)

<<+4. After-school programs, in buildings or portions thereof of other than Use Group E, accommodating six or more but fewer than 50 children of school age.+>>

(f) (No change.)

(g) Type Ag life hazard uses are as follows:

1.-3. (No change.)

<<+4. After-school programs, in buildings or portions thereof of other than Use Group E, accommodating 50 or more children of school age.+>>

(h)-(j) (No change.)

5:70-2.4B Type Ba through Bp life hazard uses

(a)-(c) (No change.)

(d) Type Bd life hazard uses are as follows:

1.-5. (No change.)

6. <<-(Reserved)->> <<+Funeral homes, funeral parlors and mortuaries providing access to the public with a maximum permitted occupancy of 100 or more but fewer than 200 persons;+>>

7.-8. (No change.)

(e) (No change.)

(f) Type Bf life hazard uses are as follows:

1.-23. (No change.)

<<+24. Funeral homes, funeral parlors and mortuaries providing access to the public with a maximum permitted occupancy of 200 or more persons.+>>

(g) Type Bg life hazard uses are as follows:

1.-3. (No change.)

4. Motion picture theaters, and theaters incorporating a legitimate, regular or thrust stage without any scenery or prop storage area behind a proscenium arch, with a maximum permitted occupancy of 200 or more <<+but fewer than 400+>> persons;

5.-7. (No change.)

8. Recreation centers, multi-purpose rooms, lecture halls, art galleries, exhibition halls and similar uses where persons assemble other than for religious services with a maximum permitted occupancy of 1,000 or more <<+ but fewer than 3,000 persons+>>;

9.-31. (No change.)

(h) Type Bh life hazard uses are as follows:

1.-4. (No change.)

<<+5. Motion picture theaters, and theaters incorporating a legitimate, regular or thrust stage without any scenery or prop storage area behind a proscenium arch, with a maximum permitted occupancy of 400 or more but fewer than 700 persons.+>>

(i) Type Bi life hazard uses are as follows:

1. Prisons and other facilities of 200 <<+or more but fewer than 300+>> beds <<-or more->> where residents, occupants or inmates are kept under restraint;

2.-3. (No change.)

<<+4. Motion picture theaters, and theaters incorporating a legitimate, regular or thrust stage without any scenery or prop storage area behind a proscenium arch, with a maximum permitted occupancy of 700 or more but fewer than 1,000 persons.+>>

(j) Type Bj life hazard uses are as follows:

1.-3. (No change.)

4. Retail stores and other mercantile uses of 48,000 square feet or more <<+but less than 100,000 square feet+>> in gross floor area;

5.-21. (No change.)

(k) Type Bk life hazard uses are as follows:

1.-6. (No change.)

<<+7. Motion picture theaters, and theaters incorporating a legitimate, regular or thrust stage without any scenery or prop storage area behind a proscenium arch, with a maximum permitted occupancy of 1,000 persons or more.+>>

(l) Type Bl life hazard uses are as follows:

1.-4. (No change.)

<<+5. Retail stores and other mercantile uses of 100,000 or more but less than 200,000 square feet in gross floor area; and+>>

<<+6. Prisons and other facilities of 300 or more but fewer than 1,000 beds where residents, occupants or inmates are kept under restraint.+>>

(m) Type Bm life hazard uses are as follows:

1.-3. (No change.)

4. Factories and other industrial uses of Use Group F-1<<-, not otherwise classified,->> of 200,000 or more <<+but less than 350,000+>> square feet in gross floor area; <<-and->>

5. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials<<-, not otherwise classified,->> of 200,000 or more <<+but less than 350,000+>> square feet in gross floor area<<-.->><<+; and+>>

<<+6. Prisons and other facilities of 1,000 or more but fewer than 2,000 beds where residents, occupants or inmates are kept under restraint.+>>

(n) Type Bn life hazard uses are as follows:

1. (No change.)

2. Above ground aggregate storage of 5,000,000 gallons or more of Class I flammable liquids<<-.->><<+;+>>

<<+3. Retail stores and other mercantile uses of 200,000 or more but less than 400,000 square feet in gross floor area;+>>

<<+4. Factories and other industrial uses of Use Group F-1 of 350,000 or more but less than 500,000 square feet in gross floor area;+>>

<<+5. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials of 350,000 or more but less than 500,000 square feet in gross floor area; and+>>

<<+6. Prisons and other facilities of 2,000 or more but fewer than 3,000 beds where residents, occupants or inmates are kept under restraint.+>>

(o) Type Bo life hazard uses are as follows:

1.-2. (No change.)

<<+3. Retail stores and other mercantile uses of 400,000 square feet or more in gross floor area;+>>

<<+4. Factories and other industrial uses of Use Group F-1 of 500,000 or more but less than 750,000 square feet in gross floor area;+>>

<<+5. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials of 500,000 or more but less than 750,000 square feet in gross floor area; and+>>

<<+6. Prisons and other facilities of 3,000 beds or more where residents, occupants or inmates are kept under restraint.+>>

(p) (No change.)

<<+(q) Type Bq life hazard uses are as follows:+>>

<<+1. Factories and other industrial uses of Use Group F-1 of 750,000 square feet or more in gross floor area; and+>>

<<+2. Warehouses, storehouses and freight depots, used for the storage and handling of ordinary combustible materials of 750,000 square feet or more in gross floor area.+>>

5:70-2.4C Type Ca through Ci life hazard uses

(a)-(f) (No change.)

(g) Type Cg life hazard uses are as follows:

1. <<-(Reserved)->> <<+Recreation centers, multi-purpose rooms, lecture halls, art galleries, exhibition halls and similar uses where persons assemble other than for religious services with a maximum permitted occupancy of 3,000 or more but fewer than 8,000 persons;+>>

2.-3. (No change.)

(h) (No change.)

(i) Type Ci life hazard uses are as follows:

1. (No change.)

<<+2. Recreation centers, multi-purpose rooms, lecture halls, art galleries, exhibition halls and similar uses where persons assemble other than for religious services with a maximum permitted occupancy of 8,000 or more but fewer than 12,000 persons.+>>

5:70-2.4D Type Da through Dc life hazard uses

(a) (No change.)

(b) Type Db life hazard uses are as follows:

1. (No change.)

<<+2. Recreation centers, multi-purpose rooms, lecture halls, art galleries, exhibition halls and similar uses where persons assemble other than for religious services with a maximum permitted occupancy of 12,000 or more persons.+>>

(c) (No change.)

5:70-2.9 Fees: registration<<-,->><<+;+>> certificate of smoke detector <<+and carbon monoxide alarm+>> compliance; permit; carnival registration certificate

(a) The annual registration fee for life hazard uses shall be as follows:

1. Type Aa--<<-\$70.00->> <<+\$84.00+>> per year;
2. Type Ab--<<-\$103.00->> <<+\$124.00+>> per year;
3. Type Ac--<<-\$110.00->> <<+\$132.00+>> per year;
4. Type Ad--<<-\$123.00->> <<+\$148.00+>> per year;
5. Type Ae--<<-\$138.00->> <<+\$166.00+>> per year;

6. Type Af--<<-\$166.00->> <<+\$199.00+>> per year;
7. Type Ag--<<-\$208.00->> <<+\$250.00+>> per year;
8. Type Ah--<<-\$248.00->> <<+\$298.00+>> per year;
9. Type Ai--<<-\$331.00->> <<+\$397.00+>> per year;
10. Type Aj--<<-\$414.00->> <<+\$497.00+>> per year;
11. Type Ba--<<-\$110.00->> <<+\$132.00+>> per year;
12. Type Bb--<<-\$208.00->> <<+\$250.00+>> per year;
13. Type Bc--<<-\$331.00->> <<+\$397.00+>> per year;
14. Type Bd--<<-\$414.00->> <<+\$419.00+>> per year;
15. Type Be--<<-\$484.00->> <<+\$581.00+>> per year;
16. Type Bf--<<-\$591.00->> <<+\$709.00+>> per year;
17. Type Bg--<<-\$629.00->> <<+\$755.00+>> per year;
18. Type Bh--<<-\$787.00->> <<+\$944.00+>> per year;
19. Type Bi--<<-\$947.00->> <<+\$1,136+>> per year;
20. Type Bj--<<-\$984.00->> <<+\$1,181+>> per year;
21. Type Bk--<<-\$1,180->> <<+\$1,416+>> per year;
22. Type Bl--<<-\$1,378->> <<+\$1,654+>> per year;
23. Type Bm--<<-\$1,537->> <<+\$1,844+>> per year;

24. Type Bn--<<-\$1,967->> <<+\$2,360+>> per year;

25. Type Bo--<<-\$2,360->> <<+\$2,832+>> per year;

26. Type Bp--<<-\$828.00->> <<+\$994.00+>> per year;

<<+27. Type Bq--\$3,088 per year;+>>

<<-27.->><<+28.+>> **Type Ca--<<-\$787.00->> <<+\$944.00+>> per year;**

<<-28.->><<+29.+>> **Type Cb--<<-\$944.00->> <<+\$1,133+>> per year;**

<<-29.->><<+30.+>> **Type Cc--<<-\$1,022.00->> <<+\$1,226+>> per year;**

<<-30.->><<+31.+>> **Type Cd--<<-\$1,101.00->> <<+\$1,321+>> per year;**

<<-31.->><<+32.+>> **Type Ce--<<-\$1,259.00->> <<+\$1,511+>> per year;**

<<-32.->><<+33.+>> **Type Cf--<<-\$450.00->> <<+\$540.00+>> per year;**

<<-33.->><<+34.+>> **Type Cg--<<-\$1,573.00->> <<+\$1,888+>> per year;**

<<-34.->><<+35.+>> **Type Ch--<<-\$1,976.00->> <<+\$2,371+>> per year;**

<<-35.->><<+36.+>> **Type Ci--<<-\$2,375.00->> <<+\$2,850+>> per year;**

<<-36.->><<+37.+>> **Type Da--<<-\$1,568.00->> <<+\$1,882+>> per year;**

<<-37.->><<+38.+>> **Type Db--<<-\$2,375.00->> <<+\$2,850+>> per year;**

<<-38.->><<+39.+>> **Type Dc--<<-\$3,088.00->> <<+\$3,706+>> per year.**

(b) Where more than one life hazard use exists under one ownership at a given location, the highest life hazard use shall be registered at full fee and subsequent life hazard uses at one-half the scheduled fee.

1. No public or private K-12 educational building shall pay more than one <<-\$138.00->> <<+\$166.00+>> life hazard use registration fee, regardless of the number or type of life hazard uses contained within the building.

2. No camp accommodating six or more children of school age shall pay more than <<-\$123.00->> <<+\$148.00+>> life hazard use registration fee, regardless of the number or type of life hazard uses contained within the premises.

3. (No change.)

(c) The application fee for a permit shall be as follows:

1. Type 1--<<-\$35.00->> <<+\$42.00+>>;

2. Type 2--<<-\$138.00->> <<+\$166.00+>>;

3. Type 3--<<-\$276.00->> <<+\$331.00+>>;

4. Type 4--<<-\$414.00->> <<+\$497.00+>>;

i. (No change.)

5. (Reserved)

(d) The application fee for a certificate of smoke detector and carbon monoxide alarm compliance (CSDCMAC), as required by N.J.A.C. 5:70-2.3, shall be <<-\$20.00->> <<+based upon the amount of time remaining before the change of occupant is expected, as follows:+>>

<<+1. Requests for a CSDCMAC received more than 10 business days prior to the change of occupant: \$35.00;+>>

<<+2. Requests for a CSDCMAC received four to 10 business days prior to the change of occupant: \$70.00; and+>>

<<+3. Requests for a CSDCMAC received fewer than four business days prior to the change of occupant: \$125.00.+>>

(e) The annual application fee for a carnival registration certificate shall be as follows:

1. For 10 or fewer locations: <<-\$50.00->> <<+\$60.00+>>;

2. For 11 to 25 locations: <<-\$75.00->> <<+\$90.00+>>;

3. For 26 or more locations: <<-\$100.00->> <<+\$120.00+>>.

(f) (No change.)

5:71-2.6 Collection of and accounting for fees and penalties

(a) Collection of registration fees:

1. (No change.)
2. The Division shall remit 65 percent of the amount collected, unless indicated otherwise below, to the local enforcing agency established for the inspection of life hazard uses. This payment shall be disbursed by the end of the quarter next succeeding the one in which fees were collected.

<<-i. In those cases in which a fee has been reduced effective November 1, 1996, and that reduction would result in the loss of revenue to a local enforcing agency for life hazard uses registered prior to that date, the Division shall adjust upward from 65 percent the percentage remitted in order to eliminate or reduce that loss.->>

<<-ii. In no case shall the percentage remitted exceed 100 percent of the amount collected.->>

Recodify existing iii.-iv. as <<+i.-ii.+>> (No change in text.)

3. <<-The->> <<+If all required inspections have been performed, the+>> local share shall not be considered State funds but rather local funds held in trust by the State.
4. (No change.)

(b)-(f) (No change.)